
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-076 - September 26, 1989

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Thomas H. Saggau, Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the implementation of hold harmless procedures under the terms of the Employer Benefit Plan.

Background Facts

On May 11, 1988, surgery was performed on the Employee's spouse; the surgeon's charge was \$315. The Employer paid the surgeon \$232, but denied the remaining \$83 as an excessive charge. The insurance carrier sent the Employee a letter dated June 7, 1988, requesting his written consent to negotiate a resolution or to defend him in any legal action commenced by the provider to collect the balance. The letter indicated that the Employer cannot act on behalf of the Employee without written consent and instructed the Employee to provide written consent within ten days.

The Employee's wife contends that they did not receive the letter from the insurance carrier until June 24, 1988, when she picked up their mail from the post office. She states that she did not read the letter thoroughly because she and the Complainant were preparing to leave for a two-week vacation on that day. The Complainant's wife also states that she did not sign and return the consent form when they returned from vacation because she was unable to find it.

On August 30, 1988, the physician filed a claim in the Circuit Court of Utah against the Employee's wife for \$109 (\$83 medical charges plus late charges and court costs). The Employee's wife received a summons dated August 30, 1988 to appear in court on September 21, 1988. The Employee's wife states that when she received the summons, she contacted the insurance carrier and requested another consent form. Her request was denied and the Employer refused to attempt to resolve the matter with the provider or defend her in court because she had not provided her written consent in a timely manner as requested. On September 20, 1988, the Employee's wife paid the physician \$109 in lieu of appearing in court.

Dispute

Whether the Employer was required to hold the Employee harmless from the provider's efforts to collect an excessive charge.

Positions of the Parties

Position of the Employee: The Employer should have held the Employee harmless from the provider's attempts to collect an excessive charge.

Position of the Employer: The Employer was not required to hold the Employee harmless because the Employee did not sign and return a form giving written consent for the Employer to intervene on his behalf on a timely basis.

Pertinent Provisions

Article III. A. (10)(b) of the Employer Benefit Plan states, in part:

(10) General Provisions

(b) Administration

The Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan.

Article III. A. (10)(g) 3. of the Employer Benefit Plan states:

(g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless

3. The Employer and the UMWA agree that excessive charges and escalating health costs are a joint problem requiring a mutual effort for solution. In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined In the Plan, from a Beneficiary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Plan Administrator or his agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Plan Administrator or his agent shall have sole control over the conduct of the

defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

Article III. A. (11) (a) 12. of the Employer Benefit Plan states:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

12. Excessive charges.

Discussion

Under Article III. A. (11)(a) 12. of the Employer Benefit Plan, benefits are not provided for excessive charges. Article III. A. (10)(g) 3. of the Plan provides that the Plan Administrator shall, "with the written consent of the beneficiary," attempt to negotiate with or defend a beneficiary against providers who seek to collect excessive fees for their services. Whether the Employer negotiates a resolution or defends a legal action, the beneficiary is not responsible for any expenses in connection with the excessive fee claim. This is known as the Plan's "hold harmless" provision.

Article III. A. (10)(b) of the Plan provides that an Employer is authorized to promulgate rules and regulations necessary to the administration of the Plan. If reasonable and effectively communicated to the Employees, an Employer's rules, including any necessary to the hold harmless program, are binding on all persons dealing with the Beneficiaries under the Plan.

In this case, the Employer communicated to the Employee its established procedures in situations where a provider's charge is determined to be excessive. By letter dated June 7, 1988, the Employer notified the Employee that it would negotiate a resolution or defend the Employee in a legal action, if the Employee provided his written consent, and if written consent was not received, the Employee could be liable for the disputed charge. The letter asked that the signed consent form be returned within 10 days.

The dispute in this case arose because neither the Employee nor his wife signed and returned the consent form which they received on June 24, 1988. There is no evidence that the Employee or his wife contacted the Employer regarding this charge or to request a replacement consent form until September 1, 1988. By then, the Employee's wife had been sued by the provider to collect the excessive charge and was scheduled to appear in court on September 21, 1988. The Employer refused to implement its hold harmless procedures at that time. The Employer notes that it would not refuse to hold an Employee harmless merely because consent was not provided within 10 days of receipt of a letter, but it does require that the form be returned in a timely manner. The Employer's requirement that written consent be provided in a timely manner is reasonable because the Employer needs time to negotiate a resolution or prepare a defense in any legal action commenced by the provider, and may be prejudiced in this attempt by the

Opinion of Trustees
Resolution of Dispute
Case No. 88-076
Page 4

Employee's failure to return the consent in a timely manner. Because the Employee failed to provide his written consent as required by Article III. A. (10)(g) 3. and failed to comply with the clearly communicated procedures established by the Employer, the Employer's refusal to hold the Employee harmless is justified in this instance.

Opinion of the Trustees

Because the Employee did not follow the Employer's clearly established and communicated hold harmless procedures and provide a timely response, the Employer is not required to hold the Employee harmless, in this instance.